THE RENT QUESTION:

BEING

A REPLY TO THE ARGUMENTS ADVANCED IN THE CALCUTTA REVIEW OF OCTOBER 1880, AGAINST THE PROPOSED NEW RENT LAW FOR BENGAL AND BIHAR

WITH

SOME PRACTICAL SUGGESTIONS FOR ATTAINING THE OBJECT DESIRED BY GOVERNMENT

BY

PARBATI CHURN ROY,

Reprinted, by permission, from the Supplement to the BRAHMO PUBLIC OPINION *for 6th January 1881*

CALCUTTA
PRINTED AND PUBLISHED BY B M GHOSE AT THE SHADHARAN BRAHMO SOMAJ PRESS, 93 COLLEGE STREET
1881.

THE RENT QUESTION:

BEING

A REPLY TO THE ARGUMENTS ADVANCED IN THE CALCUTTA REVIEW FOR OCTOBER 1880 AGAINST THE PROPOSED NEW RENT LAW FOR BENGAL AND BEHAR WITH SOME PRACTICAL SUGGESTIONS FOR ATTAINING THE OBJECT DESIRED BY GOVERNMENT.

THE readers of the Calcutta Review for October last, have been treated with an article on "The Proposed new Rent Law for Bengal and Behar" which represents the zemindar's view of the case It is the object of the present article to place before them the other side of the question, or to say what could be said on behalf of the ryot A very general and powerful cry has been raised by zemindars to the effect that, under the laws now in force, Government has no power to make the proposed law, which will interfere with the rights vested in them by the Permanent Settlement, and be highly prejudicial to their interests It will be my humble endeavour to fairly and impartially discuss these objections, and though I propose to defend the interests of the ryot, I shall not attempt to do this at the sacrifice of those of the zemindar The subjects I propose to discuss are the following :—

I What are the powers reserved by Government under the Permanent Settlement Regulations for legislating between zemindars and ryots ?

II. Were the zemindars vested by that Settlement with such absolute proprietary rights in land as entitled them to any rents they claimed or empowered them to evict the ryots at their pleasure ?

III Is the proposed law likely to act prejudicially to the interests of the zemindar ?

IV Could the question of Rates be settled in a more general and satisfactory manner than is proposed in the Bill ?

I

As regards the powers of Government for legislating between landholders and ryots, referring to Reg I of 1793 which forms the basis of the Permanent Settlement, we find that after declaring the assessment on land to be permanent, the Governor General in Council made the following proclamation in article 7, which forms Sec 8 of the Regulation

"To prevent any misconstruction of the foregoing articles (fixing the Government revenue for ever) the Governor-General in Council thinks it necessary to make the following declarations to the zemindars, independent talookdars, and other actual proprietors of land First — It being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless the Governor-General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent talookdars, ryots and other cultivators of the soil, and no zemindar, independent talookdar, or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment, which they have respectively agreed to pay" The other declarations contained in this article refer to *sayer* duties, police allowances &c. and do not come under consideration along with the present subject The meaning of the above declaration seems to be very plain It gives power

to Government to make whatever laws it might deem proper for the protection and welfare of the ryots, and the zemindars have no power to object, in consequence of such laws, to pay the revenue assessed on their estates It is impossible to put any other interpretation to the above article than that Government reserved to itself the power to frame such laws regarding the adjustment of rents &c, as it might deem fit

The meaning of the declaration becomes still more clear, when read in the light of the despatches issued by the Court of Directors for the guidance of the Governor General in Council, previous to the conclusion of the permanent settlement, as will appear from the following extract from Harrington's Analysis

"The greatest obstacle to the intended system of permanency and certainty appeared to be the difficulty of providing for an equitable adjustment, and collection of the rents payable by the ryots to the landholders. It might indeed be hoped that under the proposed system, the latter would gradually learn from experience, that their own interests are connected with the security and encouragement of the cultivators of the soil, and that the time would come when the advantage of every class of the community would be best promoted by leaving to every one the care and manngement of his own property without restriction But (the Court add) as so great a change in habits and situation can only be gradual, the interference of Government may, for a considerable period, be necessary to prevent the landholders from making use of their own permanent possession for the purposes of exaction and oppression We therefore, wish to have it distinctly understood that, while we confirm to the landholders the possession of the districts which they now hold, and subject only to the

revenue now settled, and while we disclaim any interference with respect to the situation of the ryots, or the sums paid by them, with any view to an addition of revenue to ourselves; we *expressly reserve the right which clearly belongs to us, as sovereigns, of interposing our authority in making from time to time all such regulations as may be necessary to prevent the ryots being improperly disturbed in their possession, or loaded with unwarrantable exactions* A power, exercised for the purpose we have mentioned, and which has no view to our own interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the land holders, and instead of diminishing, will ultimately enhance the value of their proprietary rights Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim, that the cultivator of the soil duly paying his rent, should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined; and that it was not left to the arbitrary determination of the zemindar; for otherwise, such a rule would be nugatory, and in point of fact, the original amount seems to have been annually ascertained, and fixed by the act of the Sovereign"—(Harington's Analysis vol ii p. 189)

I have thought it proper to italicise the words upon which I rely, and the same injunction is repeated in a later despatch, immediately preceding the permanent settlement, in which the Court of Directors order as follows —

"In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced, and

you will be careful to have it translated and circulated in the same manner as you have directed with respect to your own code of regulations. Having left it to your discretion to decide on the measures to be adopted relative to the waste lands, you will of course determine whether any reserve should be made in this declaration with a view to that object, *you will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere from time to time, as it may be necessary for the protection of the ryots and subordinate land-holders, it being our intention in the whole of this measure, effectually to limit our own demands, but not to depart from our inherent right as sovereigns, of being the guardians and protectors of every class of persons living under our Government'* (Harington's Analysis vol. II pp 191 2)

I have italicised the portions in the above extract which specially refer to the present question and throw light on the meaning of the reservation contained in article 7. But there are some who would put quite a different interpretation on this reservation. A writer in the Calcutta Review for October last discovers the meaning of the reservation to be the power of Government for doing away with the "abwaubs, mhatoots, and other perquisites and the civil and criminal jurisdiction exercised by the zemindars"

To quote the Reviewer at length :—

"The Governor-General in Council notified to the zemindars to the effect following.—We found you stewards and administrators, we have made you land owners; we have fixed the assessment for ever, according to the existing value of landed property, leaving you to enjoy the benefit of all subsequent improvements, but you shall no longer be as kings and potentates over the ryots, the Government permitted you to exercise functions which

properly belonged to Government, the ryots have not fared well under your regime and their persons and property have not been properly protected, *it being the duty of the ruling power to protect all classes of people, and, more particularly, those who from their situation are most helpless, the Governor General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent talookdars, ryots and other cultivators of the soil*; you shall not be allowed to claim any compensation for the loss of your questionable seignorial jurisdiction, privileges, and perquisites, *and no zemindar, independent talookdar or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay*"

The reviewer then goes on to say —

'The reservation in article VII of the proclamation which was on the 1st of May 1793 enacted as clause 1, Section VIII of Reg I of 1793 has been inserted in italics in the above paragraph, and the context shews what we believe it *does* mean.'

(Calcutta Review for October 1880, p.p. 359-60).

How the writer in the Review could arrive at such a conclusion as the above, it is impossible to make out In the first place, the zemindars were never "kings and potentates over the ryots," and the English Government never "permitted them to exercise functions which properly belonged to that Government" If the writer had taken the trouble to look into the Regulations passed previous to 1793 and which were in force at the time the settlement was made, he would have seen that long before 1793, there were established in the country Courts for the decision of civil and criminal cases, which were presided over by officers appointed by Government.

'Immediately after the receipt of orders from the Honorable Court of Directors, to enter upon the duties of the Dewany office, a Committee was appointed consisting of the Governor Mr Hastings and four members of the Council, who, on the 15th August 1772 proposed a plan for the administration of justice, which on the 21st of the same month was adopted by the Government under this plan, which contains some original provisions yet preserved in our judicial code, Mofussil Dewany Adawluts or provincial courts of civil justice under the superintendence of the Collectors of the Revenue, were established in each district All disputes concerning property, real or personal, all causes of inheritance, marriage and caste, all claims of debt, disputed accounts, contracts and *demands of rent*, were declared cognizable by these courts; excepting the right of succession to zemindaries and talookdaries the decision of which was reserved to the President in Council'—(Harington's Analysis vol i p 20)

The above clearly proves that since 1772 all civil cases, including *demands for rents*, in which the zemindars were directly interested, were decided, not by the zemindars and independent talookdars themselves but by officers appointed for that purpose by Government Equally conclusive evidence of the fact that the zemindars exercised, at the time of the permanent settlement, no jurisdiction also in criminal cases, will be found in the following:

'By the judicial regulations which were proposed by the committee of circuit on the 15th August, 1772 and adopted by the President and Council on the 21st of that month, a court of criminal judicature was established in each district under the denomination of Phoujdary Adawlut, in which a Kazee and Mooftee, with the assistance of two Moulvies, as expounders of the law, were appointed to try persons charged with crimes and mis-

de[illegible], and it was also declared to be the duty of the Collector of the district, "to attend to the proceedings of this court, so far as to see that all necessary evidences are summoned and examined and that due weight is allowed to their testimony &c —(Hartington's Analysis vol i p 299)

The writer in the Calcutta Review has, in a foot-note in page 359, referred to Sec 66 of Regulation VIII of 1793 from which he infers that the zemindars exercised civil and criminal powers previous to 1793 The Section says :— "Zemindars, independent talookdars, and other actual proprietors of land, dependent talookdars, farmers of land holding farms immediately of Government, and all persons farming lands of the above mentioned descriptions of landholders and farmers of land and their respective officers, agents, servants, dependents, and *ryots, are prohibited* from taking cognizance or interfering in matters or causes coming within the jurisdiction of courts of civil judicature, or the courts of circuit, or the Magistrates under pain of being liable to the payment of such fine to Government, and damages to the party injured, as the court of judicature in which they may be prosecuted for the act, may deem it proper to impose and award."

This, surely cannot mean that the zemindars previously enjoyed jurisdiction, privileges and perquisites in matters civil and criminal of which they were deprived by this section, but it means that not only the zemindars, but all persons whatever, including the *ryots*, were warned not to interfere as they had done, in the times of lawlessness which preceded the establishment of the British rule, with matters which properly belonged to the jurisdiction of the civil and criminal courts established by that Government. Besides, as Reg. VIII, which contains the above section was passed at the sametime, as Reg I, containing the re-

servation under consideration, there could have been no object in making that reservation, if it were intended to bear the meaning of the reviewer—for it ceased to have effect as soon as it was made. Government had taken into its own hands the power of administering civil and criminal justice previous to 1793, and had by Sec 66 of Reg VIII of 1793 prohibited zemindars from interfering with the same, what then could have been the necessity for a further reservation of power for the same purpose? The Reviewer has stated that the reservation was also meant to enable Government to abolish abwaubs and mhatoots But these had been abolished by Sec 54 and 55 of Reg VIII, the Permanent Settlement Law Thus argument therefore equally falls to the ground

In support of his view of the case namely, that Government reserved, at the time of the permanent settlement, no power to itself to interfere at any future time, between the zemindar and the ryot, the writer in the Calcutta Review has made the following extract from the preamble of Regulation II of 1793.

"No power will then exist in the country by which the rights vested in the landlords by the Regulations can be infringed, or the value of landed property affected"—(Calcutta Review for October 1880, p 358.)

But it will not fail to strike, at first sight, a person reading the entire preamble that the writer has altogether misunderstood the object of that Regulation, possibly in consequence of his not having taken the whole of the preamble into consideration. The preamble being too long for reproduction in its entirety in this place, a portion of it, sufficiently long for arriving at a correct understanding of the above clause, is extracted below :—

"Preamble of Regulation II, 1793 * * All questions between Government and the land holders, respecting

the assessment and collection of the public revenue, and disputed claims between the latter and their ryots or other persons concerned in the collection of their rents, have hitherto been cognizable in the courts of Mal Adawlut or Revenue Courts. The Collectors of the Revenue preside in these Courts as Judges, and an appeal lies from their decisions to the Board of Revenue, and from the decrees of that Board to the Governor-General in Council in the department of Revenue. The proprietors can never consider the privileges which have been conferred upon them as secure, whilst the revenue officers are vested with those judicial powers. Exclusive of the objections arising to these courts from their irregular summary and often *ex parte* proceedings, and from the Collectors being obliged to suspend the exercise of their judicial functions, whenever they interfere with their financial duties, it is obvious that if the Regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors; and that individuals who have been wronged by them in one capacity, can never hope to obtain redress from them in another. Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security, therefore, must be given to landed property, and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected. *Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the land holders.* The revenue officers must be deprived of their judicial power. All financial claims of the public, when disputed under the regulations, must be subjected to the cognizance of courts of judicature, superintended by Judges, who, from

their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants The collectors of the revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the courts of judicature, and collect the public dues, subject to a personal prosecution for every exaction, exceeding the amount which they are authorized to demand on behalf of the public, and for every deviation from the regulations prescribed for the collection of it. *No power will then exist in the country by which the rights vested in the landholders by the regulations can be infringed, or the value of landed property affected* Land must in consequence become the most desirable of all property, and the industry of the people will be directed to those improvements in agriculture, which are as essential to their own welfare, as to the prosperity of the State" —(Harington's Analysis vol. i p 25 26)

It was accordingly enacted by Section 2 of Regulation II, that from "the 1st May 1793, the courts of Mal Adawlut or revenue courts shall be abolished, and the trial of the suits which were cognizable in those courts, as well as all judicial powers whatsoever heretofore vested in the collectors of the revenue or in the Board of Revenue collectively, as a court of appeal, or in any member of that Board individually, shall be transferred to the courts of Dewany Adawlut."

The portion of the preamble on which great stress has been laid by the writer in the Review, is, as will be seen from above, the penultimate sentence of that preamble And, it is hardly necessary to state that, a perusal of the preamble and of Sec 2 of Reg II quoted above, clearly

shows that the power that then ceased to exist was not the *legislative power* of Government, reserved in Article 7 of the Permanent Settlement Proclamation, but the power of the Collectors and the Board of Revenue, as *executive officers* of Government to interfere judicially with the *rights vested* in the zemindars by the Regulations

II

The question now becomes—What were the rights vested in the zemindars by the Regulations? For this, we have, for our present purposes, to refer to the Permanent Settlement Regulation VIII of 1793 The first 47 Sections of this Regulation lay down rules for the settlement by Government with the zemindars, independent talookdars, and other actual proprietors of land Section 48 to 51 provide for the settlement by proprietors with dependent talookdars and *istemrardars* (mocurrerydars) existing at the time of the permanent settlement Sec 52 gives power to actual proprietors to *let* their remaining lands *i e* lands remaining after deducting the lands in the possession of dependent talookdars and *istemrardars*, to *under-farmers*, in whatever manner they think proper, under the restrictions contained in the following Section (53) which prescribes that, lands so let are not to be taken charge of without an *amulnamah* Sec. 54 and the six following Sections apply to lands held *khas* by the proprietor. It has been argued by some that the words "The zemindar or other actual proprietor of land is to let the remaining lands of his zemindary or estate, under the prescribed restrictions, in whatever manner he may think proper," in Sec 52 apply not only to lands let out to under farmers, but also to lands held by ryots A careful study of the preceding and succeeding Sections will shew that this is not the correct interpretation of the law. But

admitting it, for argument's sake, to be the correct meaning, the zemindar does not, as will appear from the following, gain anything thereby One of the Sections which follow Sec 52, prescribes that the rents to be paid by the ryots shall be according to the established rule or custom. It runs as follows:—

"LVII First The rents, to be paid by the ryots, by whatever rule or custom they may be regulated, shall be especifically stated in the pottah which, in every possible case, shall contain the exact sum to be paid by them

Second.—In cases where the rate only can be specified, such as where the rents are adjusted upon a measurement of the lands after cultivation or on a survey of the crop, or where they are made payable in kind the rate and terms of payment and proportion of the crop, to be delivered, with every condition, shall be clearly specified"

The meaning of the above Section is rendered clear by Sec 6 of Reg IV of 1794, which says "If a dispute shall arise between the ryots, and the persons from whom they may be entitled to demand pottahs (whether the rent be payable in money or kind) it shall be determined in the Dewany Adawlut of the Zillah in which the lands may be situated, according to the rates established in the Purgunnah, for lands of the same description and quality, as those respecting which the dispute may arise"

There is nothing in Regulation VIII of 1793 or Reg. IV of 1794, which could lead one to conclude that the privileges therein granted applied only to the ryots of the permanent settlement That they did not so apply will further appear from the fact that Reg. V of 1812, enacted 20 years after the permanent settlement, also refers to them. Complaints having been made to the effect that by that Regulation the privileges of the ryots had been abridged, and their claim to demand pottahs at the Pur-

gannah rates had been annulled, the Board of Revenue, in a letter to government dated 1814, state as follows :— 'A reference to the regulations in question and in particular to Sec. 3 of Regulation V of 1812 will show that so much of the 7th Section of Regulation IV of 1794, as relates to the privilege of the ryots, whose pottahs expire or are cancelled under Reg 44 of 1793, to demand new pottahs at the Purgannah rates, is in no respect abrogated, nor their right anywise detracted from, on the contrary the ryot's title to pay according to established rates is recognized and enforced in the 6th Section of the regulation in question, and in the following Section, provision is made for regulating the collection in the particular case in which no such rates are known "—(Harington's Analysis Vol III. p 484)

I think I have succeeded in proving in the above that, the only rate at which the zemindar was entitled, under the Regulations, to realize rent from the ryot was the Purgannah rate What was then the Purgannah rate ? It is impossible now, at this lapse of time, to determine what that rate was, but this much can be taken as certain that it was not a rate fixed by the zemindar, but by the authority of Government. This is manifest from the despatches of the Court of Directors quoted above, and also from the preamble of regulation IV of 1793 which says that, according to the ancient and established usages of the country, 'the dues of Government from the lands (which consist of a certain proportion of the annual produce of every beegah of land, demandable according to the local custom in money or kind, unless Government has transferred its right to such proportion for a term or in perpetuity, or fixed the public demand upon the whole estate of a proprietor of land, leaving him to appropriate to his own use the difference between the value

of such proportion of the produce and the sum payable to the public, so long as he continues to discharge the latter) are unalienable without its express sanction ' It follows from the above that it is the Government, *which has the power to determine the amount of rent payable by the ryot, leaving the zemindar to appropriate to his own use the difference between the rent payable to him by the ryot and the revenue payable by him to the public*, so long as he, the zemindar, continues to pay the public revenue.

It has been argued by the writer in the Calcutta Review that, Sec 60 of Regulation VIII of 1793 empowered the zemindar to alter the Purgunnah rate from time to time To quote his words. "Under Sec 60 he (the zemindar) shall allow all existing leases to ryots to remain until the period of their expiration, when of course he may let the lands comprised in these leases in any manner he may think proper, but as regards *khod kasht* ryots, he shall not cancel their pottahs unless within the last three years their rent has been reduced below the Purgunnah rate, or unless the existing Purgunnah rate itself is altered upon a general measurement for the purpose, this of course is not to prevent him from cancelling the pottah of all ryots *khod kasht* and others, if they are proved to have been procured by collusion." (Calcutta Review p 355)

How the writer has come to the above conclusion regarding the zemindar's power to alter the Purgunnah rate is what I cannot understand

Section 60 of Reg VIII, 1793 runs as follows —

"First All leases to under-farmers and ryots made previous to the conclusion of the settlement and not contrary to any Regulation, are to remain in force until the period of their expiration, unless proved to have been obtained by collusion, or from persons not authorised to grant them.

"Second No actual proprietor of land or farmer, or persons acting under their authority, shall cancel the pottahs of the *khod-kasht* ryots, except upon proof that they have been obtained by collusion, or that the rents paid by them within the last three years, have been reduced below the rate of the nimkbundy of the Purgunnah, or that they have obtained collusive deductions, or upon a general measurement of the Purgunnah for the purpose of equalizing and correcting the assessment."

Inorder to understand correctly the meaning of the above Section, it is necessary to read along with it the Sections immediately preceding It will then be seen that the legislature first provided rules for the protection of the ryots generally, those that were then in existence and those that might come into existence thereafter It then in Sec. 60 made special provisions for the protection of the ryots existing at the time of the settlement. The *pottahs of the khod kasht* ryots, existing at the time of the permanent settlement, could be cancelled only "under certain circumstances, one of which was a general measurement of the Purgunnah for the purpose of *equalising and correcting the assessment* This cannot mean that the Purgunnah rate could be altered by the zemindar after a general measurement It simply means that if, after a general measurement *i.e*, after a measurement of the lands of all the ryots holding in a Purgunnah it was found that a *khod kasht* ryot whose pottah was not for a term of years, paid a *proportionately less amount* of rent, for the *quantity of land* held by him, than the other ryots, then in order to *equalise* the burden of the public revenue or assessment imposed on the Purgunnah, the rents of that particular *khod-kasht* ryot, might be so revised that he bore a fair and equitable share of the assessment on which the Government revenue had

been fixed This was intended to meet exceptional cases where, if such a *khod kasht* ryot's rents were not revised, the zemindar might find it difficult to pay the Government revenue fixed on his estate. I cannot better conclude the discussion on Sec. 60, than by making an extract from a note written by Mr Mackenzie, on 20th January 1880, on the subject of enhancement which very clearly explains the meaning of this Section.

"Now obviously, as it seems to me, the whole of Sec 60 is meant to deal with cases of *existing pottahs*, and clause 2 merely contemplated *one* kind of *existing pottah*, not dealt with by clause I—a pottah, that is to say that *would not necessarily expire after a fixed term* These pottahs without specification of term were those held by *khod kasht* ryots, and were not to be interfered with, unless (1) they had been obtained at unduly low rates by collusion, or (2) the rates had been reduced below the Purgunnah rate within three years preceding 1793, or (3) there had been collusive deductions given in them, or (4) unless a general measurement of the Purgunnah took place in order to *equalise* and *correct* the assessment The last clause of Sec 54 implies that the operation of revision was to be done once and for all The whole object of clause 2 was to prevent those *khod kashts* who were holding at *less* than Purgunnah rates from having those rates increased under *ordinary* circumstances in the course of that revision It is impossible to believe that if this measurement and assessment were meant to be an ordinary and recurring way of raising the Purgunnah rate, this would not have been distinctly stated instead of being wrapped up in a single phrase, coming in quite incidentally in a Section regulating merely the treatment of existing *be-miyadia pottahs*"—(*Calcutta Gazette* July 21, 1880, p 417, para 8)

It was not, as has been shown above, in the power of the zemindar to vary or alter the Pargunnah rate which was a rate fixed by authority. It consequently follows that the zemindar had no power under the permanent settlement regulations, and those that immediately followed that settlement, any power to *enhance* the rates of rents payable by ryots We shall hereafter see that he had also no power to evict them.

III

The principal changes proposed in the Bill under discussion are the following.

(1) Extension of occupancy rights

(2) Transferability of occupancy rights

(3) Maximum limit for enhancement of rents

We shall examine these changes one by one with reference to their bearing on the interests of the zemindar.

As regards the changes proposed in the Bill in favour of cultivating ryots holding for less than twelve years and of non-agricultural ryots generally, we have first to consider what the rights of the ryots generally were at the time of the Permanent Settlement, and whether the 12 years occupancy rule introduced by Act X of 1859 was not a curtailment of those rights.

In his discussion of this question, the writer in the *Calcutta Review* for October has contented himself with quoting some modern judges as his authority But with all respect for those learned judges, it must be said that though their opinions are entitled to very great weight in cases where no records of a more ancient date exist, they must be received with very great caution where such records are available.

It has been alleged on behalf of the zemindars that previous to the passing of Act X of 1859, ryots had no

right of occupancy, that they could be subjected to the payment of any amount of rent by the zemindar, or turned out from their holding at the pleasure of the zemindar. Referring to Reg VIII of 1793, which contains the terms under which the Permanent Settlement was made with zemindars, we find no evidence in support of this allegation. We have seen in an earlier part of this article, that under that regulation, the zemindar could not demand from a ryot, whatever his status might be, any rate of rent that was not according to established rule or custom We have also seen how by subsequent regulations, the zemindar's right was limited to the Purgunnah rate of rent, and how in case of dispute as to what the Purgunnah-rate was, the question was decided by the Civil Court

When a dispute arises regarding the interpretation of a law, it is usual to refer to the correspondence that preceded the passing of that law, and capable of throwing light on the subject In this case we have the following memorable minute from the author of the Permanent Settlement :—

"In order to simplify the demand of the land-holder upon the ryot, or cultivator of the soil, we must begin with fixing the demand of Government upon the former. This done, I have little doubt but that the holders will, without difficulty, be made to grant pottahs to the ryots upon the principles proposed by Mr Shore in his propositions for the Bengal settlement. The value of the produce of the land is well known to the proprietor or his officers, and to the ryot who cultivates it, and is a standard which can always be resorted to by both parties for fixing equitable rates

"Mr Shore's propositions,—that the rents of the ryots, by whatever rule or custom they may be demanded,

shall be specific to their amount, that the land-holders shall be obliged, within a certain time, to grant pottahs or writings to their ryots, in which this amount shall be inserted, and that no ryot shall be liable to pay more than the sum actually specified in his pottah,—if duly enforced by the collectors, will soon obviate the objection to a fixed assessment, founded upon the undefined state of the demands of the land holders upon the ryots When a spirit of contentment is diffused throughout the country, the ryots will find a further security in the competition of the land holders to add to the number of tenants. Some interference is undoubtedly necessary on the part of Government for effecting an adjustment of the demands of the zemindars on the ryots. Unless we suppose the ryots to be the absolute slaves of the zemindars, every biggah of land held by them must have been cultivated under an express or implied agreement that a certain sum should be paid for each biggah of produce and no more. Every abwab, or tax, imposed by the zemindar, over and above that sum, is not only a breach of that agreement, but a direct violation of the established laws of the country. I do not hesitate, therefore, to give it as my opinion that the zemindars, neither now nor ever, could possess a right to impose taxes, or abwabs, upon the ryots; and, if from the confusions which prevailed towards the close of the Mogul Government, or neglect, or want of information, since we have had possession of the country, new abwabs have been imposed by the zemindars or farmers, our Government has an undoubted right to abolish such as are oppressive, and have never been confirmed by a competent authority and to establish such Regulations as may prevent the practice of like abuses in future. Neither is the *privilege which the ryots in many parts of Bengal enjoy, of holding*

possession of the spots of land which they cultivate so long as they pay the revenue assessed upon them, by any means incompatible with the proprietary rights of the zemindars Whoever cultivates the land, the zemindar can receive no *more than the established rent*, which, in most places, is fully equal to what the cultivator can afford to pay." (Harington's Analysis, vol. ii p 183 4)

It will appear clearly from the above extract that in many parts of Bengal *all ryots whatever enjoyed the privilege of holding possession of the spots of land which they cultivated so long as they paid the revenue assessed upon them and* that was not considered incompatible with the proprietary rights of the zemindars. Whoever cultivated the land, the zemindar could receive from him no more than the established rent, *i. e.* rent established by the authority of the sovereign power It will further appear from the despatch of the Court of Directors quoted above that under the practice of the Mogul Government—"which the Court then intended to follow, *it was a general maxim that the immediate cultivator of the soil, duly paying his rent, could not* be dispossessed of the land he occupied"

The only distinction made in ancient times was between the *khod kasht* and *pye kasht* ryots, as will appear from the following:—

"The most general distinction however, with respect to their (ryots) tenures is that of *khod kasht* and *pye-kasht* The name of *khod-kasht* is given to those ryots who are inhabitants of the village to which the lands that they cultivate belong. *Their right of possession, whether it arises from an actual property in the soil, or from a length of occupancy, is considered as stronger than that of other ryots*, and they generally pay the highest rent for the lands which they hold.

The *pye kasht*, on the contrary, rent land belonging to a village in which they do not reside. They are considered as tenants at-will, and having only a temporary and accidental interest in the soil which they cultivate, will not submit to the payment of so high a rent as the preceding class of ryots; and, when oppressed, easily abandon lands to which they have no attachment The *khod-kasht* ryots partake of the *rights of hereditary land-holders*. The *pye-kasht* are more of the nature of annual or transitory tenants"—(Harington's Analysis vol ii p 64)

Now, leaving the question of rent apart, which will be discussed hereafter, we find that in ancient times—in the times of even the Mogul Government—all *khod-kasht* ryots, whatever the length of time might have been for which they held land, enjoyed occupancy rights, and that the only ryots who had no occupancy rights were the *pye-kasht* ryots Thus continued to be the state of things till 1859, when the 12 years rule was introduced As the number of *pye kasht* ryots, to whom occupancy right was given under this new law, was very small, it cannot be said that the change introduced by it, as to the *status* of the ryots generally, was for the better. Many *khod-kasht* ryots, who, under the previous custom, would have enjoyed occupancy rights, even if their holdings were not so old as 12 years, were deprived of this privilege by the law of 1859. The proposal to confer some rights on this class of ryots is, not an innovation, but a restoration of what existed in former times. The right of occupancy enjoyed by the ryots *was never a creature of the statute* as is alleged by the zemindar's advocates.

We come now to the consideration of the next question, namely, the transferability of occupancy rights.

The old regulations are silent on this subject. But

custom is a very great authority in this country, and the writer in the *Calcutta Review* for October has been forced to admit the prevalence of this custom in *some parts of Bengal*, though he questions its applicability to *all parts of Bengal* In his opinion "wherever occupancy holdings have become transferable by local custom, the fact is a good proof that the custom is suited to the locality If occupancy holdings are tending to become transferable in various parts of the country, depend upon it that the tendency will ripen into a custom whenever it is really suited to the locality, and the introduction of the rule of transferability in other places cannot but prove mischievous The development of customs is in all countries regulated by the law of the survival of the most suitable. With the information, the facts and figures at their command, for the Legislature to declare occupancy holdings throughout the territories subject to the administration of the Lieutenant-Governor of Bengal to be transferable without substantial security, or any other restriction whatever, would not be taking the timeous step in aid and anticipation of salutary social and economical tendencies, which we believe to be the true function of legislation, and which we sincerely rejoice to find implicitly postulated, but it would be simply taking a large leap in the dark Moreover, free trade in occupancy holdings, though it may be desirable in countries where competition rules all economical relations, can hardly be the thing wanted or a really desirable thing in Bengal, the true political economy for which, as the report constantly insists, is the political economy of custom"

It will be seen from the above that the writer in the last number of the *Calcutta Review* has no objection to making the right of occupancy transferable in cases

where custom has developed in favour of transferability. "From the reported decisions" he says "it certainly does not appear that the idea has made such progress, and with such results in realising itself in occupancy holdings, that the Legislature is called upon to take the step proposed." The question then turns on the point as to how far the ryots are prepared for the proposed legislation in their favour. For this purpose it will not be sufficient to refer only to the "reported decisions" as an advocate is apt to do, but it will be necessary to make enquiries in the Registration offices, where such transfers are always registered, and to make local enquiries, and ascertain the wishes and feelings of ryots. A ryot's most valuable property is his holding, and he will not part with it unless compelled by very great necessity.

But as it appears from the extract made above, that the writer in the October number has no objection to the transferability of the occupancy right under "*substantial security or any other restriction*," it is necessary to see how far the Bill proposes an unrestricted transfer. Now the principal objection, against the transference of an occupancy right from the zemindar's point of view, arises from the circumstance that it may diminish the value of the holding. But, how can the value of a holding diminish by simple transfer? The land continues as before, the only difference being that instead of getting rent from A, the zemindar gets it from B, and the best security for the payment of rent by either A or B, is the land itself, the productive quality of which might be as much improved or impaired by B as by A. The only possible manner in which a ryot could diminish the value of his holding by transfer would be by splitting it up into different parts, in such a manner as would be prejudicial to the interests of the zemindar. But the Bill

very properly requires, for the validity of such transfers of shares, the consent of the zemindar Sec. 20, clause (*b*) which renders a right of occupancy transferable, runs as follows. "It (the right of occupancy) may be transferred by private sale or gift, and may be devised by will, and the consent of the landlord shall not be necessary to the validity of any such transfer or devise: *provided that no transfer or devise of a portion only of such holding shall be valid against the landlord without his written consent*" Though from the ryot's point of view, the restriction contained in the above *proviso* is highly objectionable, as it materially curtails his power of using the occupancy right to his best possible advantage, it affords a sufficient security to the zemindar, so that his interests will not *in any way suffer by the* transfer

Passing over one or two minor points discussed by the writer in the October number, we come to the most important portion of the Bill which refers to the enhancement of rent We have seen in a preceding portion of this article, that neither under the permanent settlement Regulations, nor under those that were subsequently passed, the zemindars had any power to *enhance* rents beyond the Purgunnah rate *i e* the rate that prevailed in the Purgunnah at the time of the Permanent Settlement, and what that rate was, was to be decided by the judge of the district court Act X of 1859 tried to remove the disadvantage under which the zemindars were then labouring, by making those well known provisions for enhancement, which have since given so much occupation to the courts, proved harassing both to landlords and tenants, and greatly disturbed the peace of the country. For a time, the tide ran in favour of the zemindars, the most intelligent of whom succeeded in raising within

a short time the rents of their ryots very high But after a few years, the table was turned, and the ryots have now got the upperhand, and the zemindars seldom succeed in enhancement suits.

For the interests of the zemindars, a change is necessary. It is proposed in Sec. 23, clause (c) of the Bill that the maximum limit to which the rent of a ryot having a right of occupancy could be enhanced upon the ground that the existing rent is below the prevailing rate, or that the productive powers of the land have increased, or that the value of the produce has increased, is that it shall not be more than one-fourth of the average annual value of the gross produce of the land for which such rent is payable. On this the writer in the October number makes the following remarks :—

"No particular reason is assigned for fixing this precise maximum limit It introduces an *arbitrary* rule to control the operation of the *equitable* rule, laid down in the great rent case. Its only justification is that it is a practical application of the novel theory of rent announced in the Report."

The reason why the limit was particularly fixed at one-fourth, is not however, so very difficult to understand as it seems to have appeared to the writer in the October number of the Review. In ancient times, "the king's share of the produce of the soil was one-twelfth, one-eighth, or one-sixth, according to the soil and the labour necessary to cultivate it. This also might be raised, in cases of emergency, even as far as one-fourth. The rest belonged to the cultivator." (Elphinstone's History of India vol I, chap. ii, p. 41.) It is not easy to assert what the proportion was at the time of the Mogul Government. The rate assessed by Rajah Todar Mull, under Emperor Akbar, was one-third of the gross produce, according to

Elphinstone. But, it would appear, from the judgment of Justice Trevor in the Great Rent [redacted] of Thakooranee Dasbee (p. 211, Part 1, Full Bench Rulings) that the Sovereign's share, under the Mogul Government, was from one-half to one-eighth of the gross produce, according to circumstances Now, by adopting one fourth of the maximum limit, the framers of the Bill evidently took the highest share of the produce, ever taken by the Hindoo kings, and the average of what prevailed during the times of the Mogul Government immediately preceding the English.

From the facts and figures embodied in " The Rent question" published in 1876, the following inferences were drawn —

" It thus appears from the above, that the ratio which rent bears to gross produce varies in the different districts In Dacca and Mymensingh, it is 1/20 , in Backergunge and Jessore 1/13 ; and in Rungpore 1/10. We see that the rates in Bengal generally vary from Rs 3 8 a biggah to 12 ans a biggah, and the ratio which the rent bears to the produce also varies form 1/10 to 1/20."—(Rent question p. 12)

The above ratios representing the present state of things, can it be disputed for a moment that the proposal to lay down the maximum limit at one-fourth the gross produce, is most advantageous to the zemindar, while it is most disadvantageous to the ryot, and that, while the zemindar has to make certain concessions in favour of the ryots in some minor points, he is more than amply repaid for them by the very great advantages proposed to be conferred on him as regards the enhancement of rents ? It is true that the zemindars of Western Bengal and of Behar, where the ryots are already rack-rented, will not gain much by the present proposal But as, even in those

districts, the ratio of rent to gross value of produce is now represented by ⅛ (Rent question p 19) there still remains some room for further increase This increase will not be much but the condition of the ryots in those parts of the country will not admit of much further increase. An eye-witness from Burdwan gives the following description . —

"The most deplorable feature is that the people here are extremely poor. You cannot form, nor can I convey to you, the idea of the extreme poverty which prevails here It may seem strange to you that the most renowned district of Bengal is so very poor. But such is the fact Almost all the people take only one meal a day The Brahmins—Mookerjees, Bannerjees and Chatterjees—the Ghoses and Boses, and all others work in the field The tenants are rack-rented Lands yield very little produce, and the consequence is that they constantly change hands. You may take it as a fact that the people of East Bengal are far better off than the people of this quarter Such poverty as this ought to create grave anxiety, but the few persons who form the upper class are prone to enhance the rents of the already rack-rented tenants"—(Rent Question, p. 18)

I think I have succeeded in showing in the above the *reasons*, why the maximum limit of rent claimable by zemindars has been fixed at one-fourth the value of the gross-produce, and why this limit should be considered fair and equitable by zemindars The writer in the October number is not satisfied with this rule which he considers arbitrary, but would abide by the unfettered "operation of the *equitable* rule laid down in the Great Rent Case This may be the opinion of a person whose knowledge of the working of the rule is derived from the published decisions of the High Court, but with one

who has had experience of the practical working of it in the Mofussil, that rule will cease to be an object of admiration Under the equitable rule of the High Court "the old rent must bear to the new rent the same proportion as the former value of the produce of the soil bears to its present value" For the satisfactory solution of this proportion, it is not only necessary to know what the old rent was, but it is also necessary to know what the value of the produce was when this old rent was fixed. Now, as in most estates the old rents date from time immemorial, and as there is hardly a case in which satisfactory evidence can be adduced regarding the value of the produce formerly grown in the soil, the consequence is, that an enhancement suit is seldom decreed in the civil courts, though, as we all know that as a rule, there has of late been a general rise in the prices of the different kinds of produce The main object of the present Bill is, as we shall presently see, to afford facilities to landlords in the enhancement of rents, and the fixing of the above maximum limit is a part of the general plan It will be our business now to explain what that general plan is

We have already seen that by virtue of the power that Government reserved to itself by article 7 of the Permanent Settlement Proclamation, Government has regulated from time to time between the landlord and the tenant in the manner it considered best for their welfare. Under the improved civil and criminal administrations of the present time, the zemindars found it difficult to proceed with the illegal exactions which they were in the habit of restoring to in former times They turned to their right of enhancing rents, but found that, for reasons explained above, this right was also most difficult to exercise Under the circumstances, not venturing to pry

for a repeal of the law regarding enhancement, which they naturally believed Government would not easily be moved to undertake, they, as the writer in the October number puts it, "first clamorously called for some reform in the existing land relating to the recovery of rents. In the course of certain tentative efforts at legislation in this direction, it was found impossible to frame a procedure which should afford facilities to the zemindar without at the same time pressing unfairly upon the ryot." It was found on inquiry that, in most of the cases for recovery of rents, the real dispute was a dispute regarding rates. Finding it impossible to solve, through the means of the law courts and with the aid of the laws now in force, the problem regarding the adjustment of rates of rent, on which depends the solution of all the other problems between the landlord and tenant Government proposes to decide this matter in a more practical manner, mostly through the aid of executive officers. To understand clearly the provisions of the Bill on this subject, we make the following extracts from the Rent Commissioners' Report :—

"Para. 71 Coming now to the details of the *Enhancement Procedure* provided in the Bill for the Collector, we think that there are three general classes of cases to meet which more particularly this procedure should be directed, viz.—

(I) Where the dispute is mainly about rates, and there is reason to believe that, if the rates were once authoritatively settled for different classes of land, the landlord and his tenants would find no real difficulty in arranging what rent each ryot should pay according to those rates.

(II.) Where the dispute is not only about rates, but also about the quantity or quality of the land held by

each ryot or about both, and nothing but the preparation of a detailed jamabandi or rent roll can settle all matters in controversy between the parties

(III) Where the landlord, being a new purchaser at a revenue or execution sale, is unable to ascertain the previous rents payable by the tenants or the exact undivided by them, or both Here there may possibly be room enhancement, and the purchaser may be content to collect the rents payable to his predecessor, if he can only discover for certain what those rents were"

The modes of Procedure, provided for to meet the requirements of the first two cases, (the third, properly speaking, not being a case of enhancement) are as follow —

"72.—In the first of the three cases previously, *the applicant*, the landlord who applies to the Collector for enhancement, will ask the Collector to prepare a *Table of Rates* for the estate, tenure or undertenure, in respect of which the application is made We have defined a "Table of Rates" to mean "a Table or schedule which exhibits the classes of land in an estate, tenure or undertenure according to the classifications usual in the locality, and the rates of rent payable for each class * * *

"78.—The Table of Rates, as finally sanctioned by the Board or the Commissioner, will be binding upon, *the applicant* and the ryots, and will be conclusive to this extent, that the rates therein specified are the fair and equitable rates, payable for the classes of land specified in such Table by ryots having a right of occupancy *The applicant* will not, however, be able to recover rent from any individual ryot, according to the rates specified in the Table, until it has been proved in a further proceeding or the ryot has admitted, that the lands held by him are lands of the same classes as those shown in the Table It has been asserted by persons of experience and ability

that if rates were once settled by authority, landlords and tenants would soon be able to adjust their differences * * *

"79 If, however, the ryots make unreasonable objections on the one hand, or the landlord will not yield to reasonable claims on the other hand, there are two courses open for the settlement of these individual grounds of dispute (Sec 106) *The applicant* may proceed in the civil court to enforce the Table of Rates against his ryots, and any number of ryots not exceeding ten may be made co defendants in any such suit * * * The other course open to *the applicant* is to apply to the Collector for the preparation of an enhanced jamabandi, and this he may do at any time after three months (this affords time for an amicable settlement) and within one year from the date of the Table of Rates being finally sanctioned * * *

'80 *The applicant* may ask the Collector to prepare an enhanced jamabandi of the estate, tenure or under tenure in respect of which the application is made, (1) by his original application, or (2) by a supplementary application, after he has obtained a Table of Rates and has failed to settle with some or all of his ryots" A 'jamabandi" is defined to mean a table or schedule, which exhibits,—

(1) the names of the ryots in an estate, tenure or undertenure,

(2) the quantity of land, or where such land consists of different classes, the quantity of each class, held by each ryot,

(3) the total rent payable by each ryot for the total land of each class held by such ryot, and

(4) the grand total of rent payable by each ryot.

An "enhanced jamabandi" is defined to be a jamabandi which, in addition to the above particulars, further exhibits—

(a) when enhancement is allowed on the *first ground* (the rate being below the prevailing rate in the vicinity),

(5) the prevailing rate of rent allowed for any class of lands instead of the rate previously payable;

(6) the new total rent payable, in consequence, for all the land of such class held by each ryot, and

(7) the new grand total of rent payable by each ryot

(b) when enhancement is allowed on the *second ground* (the quantity of land being shown by measurement to be greater),

(5) the additional land of each class proved to be in the possession of each ryot;

(6) the new total rent payable, in consequence, for all the land of such class held by each ryot; and

(7) the new grand total of rent payable by each ryot.

(c) when enhancement is allowed on the *third* or *fourth* ground, (that the productive powers of the land have increased or that the prices of produce have increased),

(5) the enhanced rate of rent allowed for each class of land,

(6) the new total rent payable in consequence, for all the land of such class held by each ryot, and

(7) the new grand total of rent payable by each ryot

* * * * * *

"*The applicant*, for an enhanced jamabandi, has to file with his application a copy of the enhanced jamabandi which he alleges to be fair and equitable and according to which he claims enhancement If the ryots agree to this jamabandi, it will be declared binding on them and the applicant for ten years If they object, the Collector will decide objections and prepare a jamabandi that he considers fair and equitable. This jamabandi when declared final "will be binding on the landlord

and the tenants for ten years, subject to enhancement for alluvion and abatement for diluvion."

"In order to facilitate inquiries into the increase or decrease of prices as a ground of enhancement or abatement of rent, it is provided for in Section 122 of the Bill "that the Collector of every district shall prepare annual lists of the prices at harvest time, of the staple crops appointed by the Board of Revenue for districts or other areas. These price lists will be prepared under rules made by the Board in order to secure uniformity, and will be published annually in the Calcutta Gazette."

Any one acquainted with the difficulties now experienced by zamindars in making enhancement of rent will admit that the above provisions for the preparation of a table of rates and an enhanced jamabandi have been made especially for their benefit. But the writer in the October number has nothing to say with regard to this part of the Bill which forms the most important portion of it

IV.

As the above methods of solving the enhancement difficulty do not appear to me to be very satisfactory, I shall try to explain here my views on the subject.

The proposal to prepare a table of rates is similar to the one made by me in a pamphlet published on the Rent question four years ago I take the liberty of reproducing here what I then said on the subject:—

"Considering these facts, (that there have been numerous instances in which enhancements have taken place since the passing of Act X of 1859), Government should ascertain by local inquiries the various rates current in the different districts. A Commission consisting

of experienced revenue and civil officers could be appointed for the purpose The landlords could be asked, by means of a proclamation, to produce what *decrees* and *registered kabuliyats* they possessed in proof of the enhanced rates. The records of the revenue and civil courts (under the rent laws) could be consulted with advantage, and so could the books of the Registration offices, where large numbers of *kabuliyats* are registered annually The settlement records of Government, and resumed temporarily settled estates, would also furnish much valuable information. Having ascertained these rates, the next thing would be to declare the *highest rate* prevalent for *each kind of land*, in portions of the district similarly circumstanced These should be declared as the rates legally claimable by landlords from occupancy ryots, no provision being necessary for non occupancy ryots, in whose case competition comes into full play. The district rates, being thus determined, landlords, wishing to enhance, will have simply to prove to what class the land, for which enhanced rate is claimed, belongs. This will ultimately equalise rents in similar portions of a district, and, as the equalisation would be gradual, the increased rate would not be much felt by the ryots On the other hand, those landlords who are under the disadvantage of getting low rates, would find this to be a great boon, and all parties, landlords and tenants, under similar circumstances in the same district, would be on a footing of equality It seems that at the commencement all the rates in a Purgunnah, or other division of a district, were the same, and that the present inequalities have been the result of subsequent enhancements. The steps recommended here will therefore, only restore the state of things that existed before.

"The rates thus fixed might be allowed to remain unaltered for, say, ten years, at the expiration of which they might be revised with reference to the increase or decrease in the productive powers of the la d, and to the increase or decrease in the value of produce, according to the principle laid down by the High Court in the well-known case of Thakooranee Dasee

"The present productive powers of each class of land for each description of crops may be ascertained with pretty sufficient accuracy, and so may the present prices of all kinds of produce. These may be recorded for each class of land, and published in the Calcutta Gazette. When, at the expiration of ten years, the question of revision is taken up, these facts will be found to be of very great use. It is not to be supposed that in a question like this, into which many concrete elements enter, there can be anything like an *accurate* solution for each particular field. This never has been, and never can be, the case To expect it, would be to expect what is impossible. All that is possible and what Government at present wants, is a solution which would answer approximately the requirements of each case. Broadly speaking, such an adjustment as the above will have all the advantages of a general land-settlement by Government, so far as landlords and tenants are concerned. When those classes will rightly understand their relative position, they will cease to quarrel, and 'will cultivate friendly feelings'—(Pamph et on the Rent question p 4-5) *

* Regarding the above scheme the *Statesman* made the following remarks:—We have several times had occasion to refer to an excellent little pamphlet on the Rent question by Baboo Paibutty Chun Roy, which contains some very valuable suggestions. He is, of course, opposed to Sir Richard Temple's scheme, except with very important modifications Our own opinion has been freely

A comparison of the provisions made in the Bill for the preparation of a table of rates with the scheme pro-

---

given that the only possible procedure to allay difficulties is a complete settlement of the land This indeed, the author points out and he submits a scheme which is certainly very workable He urges as a preliminary to all legislation that the Government should ascertain by local enquiries the various rates current in the different districts Having ascertained these, the next thing is to declare the highest rate prevalent for each kind of land in portions of the district similarly circumstanced. Landlords wishing to enhance would have to prove to what class the land belongs The rates thus fixed should be allowed to remain unaltered for a period of ten years ; when they should be revised according to the rule of proportion. The present productive powers of each class of land for each description of crop should be ascertained, and the actual local selling prices of all kinds of produce recorded and published in the Government *Gazette* As the author says "an adjustment" such as the above "will have all the advantages of a general land settlement by Government, so far as landlords and tenants are" concerned. When "those classes will rightly understand their "relative positions they will cease to quarrel, and will cultivate friendly feelings"

For the realization of rents it is proposed, that on an application being made to the Collector for arrears of rent, if he finds that the rents are *prima facie* due to the landlord, the Collector may employ the certificate procedure already in force in Government estates If not, he should refer the parties to the civil courts.

We must say that this scheme is a simple and a manly way of meeting the difficulty, and is by no means unworthy of the nation which produced a Todar Mull. It meets the case not badly, as far as any arrangement short of a regular settlement of the land in which Government is a party, can possibly meet it It is not complete, because it forgets that Government is most deeply interested in the matter, and that a record of all rights and all rates is required So far as Landlord and Tenant are concerned, it is complete and we regret that for some years to come there is little chance of its being adopted —*The Statesman 7th March, 1877.*

posed by me in 1870, will show that the only difference between the two is this :—

While the Commissioners propose to settle the rates for each particular landlord as he happens to apply, I propose to settle them generally for all places similarly circumstanced, without waiting for any application from landlords It appears from para 20 of Mr Secretary Mackenzie's letter No 2286½ 1322½ L R, dated the 15th July 1880 forwarding, for the consideration of the Board of Revenue, a copy of the report of the Rent Law commission, that His Honor the Lieutenant Governor is also inclined towards making a general settlement of rates. The para in question runs as follows :—

"This chapter (chapter XV of the Bill) provides an elaborate procedure for enhancing the rents of occupancy ryots and tenure holders Its provisions are explained at length in paragraphs 63 to 97 of the Report. The Lieutenant Governor, as at present advised, is very much disposed to concur in the view taken by Mr Dampier (for doing away with the preparation of an "enhanced jamabandi" by the Collector) in his remarks appended to the Bill *It might even be sufficient to provide that, the Revenue authorities, or specially selected officers working in conjunction with the district officers, should from time to time settle authoritative tables of rates for all districts or parts of districts, the rest being left to the civil courts, except perhaps in the cases described in Section 112 et seq* (i e when the purchaser of an estate is unable to ascertain the ryots liable to pay rent to him &c)

As the settlement of the question of rates in the above general manner might appear a very difficult, if not an altogether impossible work, and as objections might be raised against it on the ground of costs, I shall try to

explain my views on the subject at some length To anyone acquainted with the physical features of Bengal villages, the practical difficulties will not appear to be very great It is not that the different descriptions of land for which different rates are taken by landlords are scattered over the village in an irregular or whimsical manner, but there is a law according to which all the lands of one description are generally to be found together As a *rule, all high* lands are in one part of the village, and all low lands in another, or all clayed lands in one place and the sandy lands in another This is the general rule, though there are often exceptions to it It will be found on inquiry that this law applies not only to villages taken *singly but often when taken in groups* Such being the case, the classification of lands similarly circumstanced, according to the character of their soil, becomes practically a matter of not much difficulty. It is true, as the Rent Commissioners report, that a distribution of lands into different classes "according to a more extended or more limited classification, prevails in every estate, and that is *well known to, and well understood by, the ryots*" There is not therefore much likelihood of a dispute, regarding classification, arising between the landlord and tenant in the event of a local inquiry being ordered by Government.

What is necessary, therefore, previous to the settlement of rates, is that the lands of a particular tract of country, *similarly circumstanced, should first be demarcated on* the spot, and then maps should be prepared, with the aid of which they could afterwards be identified With this object revenue officers, who have *had not less than ten years' experience* in the settlement of Government khash and resumed estates, should be deputed to go over the country, the rates of which are to be settled, and

demarcate on the spot, in the presence of the zemindar's agents and the head ryots of the village, the *different description of land in blocks*, not according to the crops they produce, but according to their productive powers As soon as the lands are demarcated, the lines of demarcation will be surveyed with chain and compass, so that they might be reproduced in the Thackbust maps, with copies of which the settlement officers will be supplied from the Collectorate The settlement officers will be accompanied by a number of surveyors to carry out their orders in the field, and to prepare the contour maps shewing different classes of lands To secure identification of the several classes in future, permanent landmarks, in the shape of pukka pillars, will be left on the ground at certain distances, and the position thereof accurately shown in the maps The classification being completed, the settlement officers will proceed to fix the rate of rent, payable for a standard biggah of each class of land. In doing this, they will consult registered kabulyats and civil court decrees, examine witnesses, and hold local inquiries regarding the value of produce per biggah. They will also take into consideration the local advantages or disadvantages, as regards the means of communication, the largeness or smallness of ryotee holdings, and the sparseness or density of population They will then fix the rates they consider fair and equitable, and will report their proceedings to the higher Revenue authorities for confirmation The landlords and the ryots will be allowed opportunities for objecting to the settlement officer's classification of lands and assessment of rates.

It will have appeared from the above, that the classification proposed to be made, is not according to the kind of produce that is grown in the land, but according to its productive powers. This is in accordance with the

views expressed from time to time by the Court of Directors and now endorsed by the Rent Commissioners, as will appear from the following —

"We (the Commissioners) find the Directors writing out in 1837 to the following effect —

'It is the productive power of the land, and not its actual produce, that should be taken as the guide in making the assessment. By this mode the best description of encouragement is given to the cultivator to extend cultivation, and raise crops immediately beneficial and profitable to himself, and such a system we have on a former occasion observed, and are still of opinion, would not ultimately be found detrimental to the interests of the State' We do not therefore propose to interfere with any existing classification of lands based on the *superior quality* or *capability of producing special crops*, but we think that, in regulating enhancement of rent, on the ground of rise of prices, account should be taken of the staple crops only A different rule would in our opinion tend to discourage the cultivation of new and valuable species of production, and so prevent agricultural improvement. By allowing the Board of Revenue to declare from time to time what shall be taken to be the staple crops for particular areas, an opportunity will be afforded of making any new crop a staple one as soon as its cultivation has been thoroughly and generally established As to special crops, such as betel-leaf, tobacco, sugar cane, and such like, we think that, as they are grown only occasionally or in small quantities and require particular attention, and involve special expenditure, they ought not to be considered in settling enhanced rents. — (Rent Commission Report p. 40)

The rates being once fixed, a general revision thereof should take place after the expiration of ten years from

the date of the first adjustment, when no alteration should be made in the classification, except on the application of the landlord or the tenant. The point, on which as a rule inquiry will have to be made at this revision, will be, whether there has been, since the adjustment immediately preceding, an increase or decrease in the prices of the different kinds of staple crops. To perform the second inquiry in a satisfactory manner, the prices of these crops at the time of the first inquiry will be recorded, and published, as has already been proposed, in the Calcutta Gazette.

A general adjustment of rates being made in the above manner, the necessity for an "enhanced jummabandi," as proposed in the Bill will cease to exist. Any dispute arising between the landlord and tenant, regarding the class to which a particular plot of land belongs, will best be decided by the civil court by comparing on the ground the map prepared by the settlement office.

The question of costs has now to be considered. It might be said that the costs for making such a general settlement of rates, as has been proposed above, would be enormous, and that ought to be a most serious objection against its adoption. But, looking at the expenses incurred in the settlement of the Districts of Eastern Bengal, it appears that the costs for the above general adjustment of rates will not exceed Rs. 20 per square mile, or about Re. 1 per one hundred biggahs of land. These costs should be recovered from the landholders of the district, for whose benefit the operations will take place, in proportion to areas of their respective estates. The Thackhust maps and the land registration registers will supply with all the necessary informations for doing this. As an estate with an area of one square mile, 2,000 biggahs, will have to pay only Rs. 20, the burden to

be borne by the zemindars for the above settlement of Rates will not at all be heavy

It might be asked, why go through this elaborate process for the *classification and demarcation of lands*, previous to the settlement of rates when the simple publication of a Table of Rates as was proposed in 1876 in the pamphlet on the Rent Question, and as is now proposed by Government, would suffice? The answer to this is that, as according to the scheme set forth in the pamphlet on the Rent Question which has been quoted above, the landlord would, at starting have got only the *highest rate prevalent* in the neighbourhood, *at the time* of the publication of the Table of Rates, the increase in rent, where it took place, would have been very moderate only an anna or two in the rupee In such circumstances the rough method of adjustment by the publication of a Table of Rates was not likely to seriously affect the interests of the ryot But as, under the plan proposed in the Bill a ryot might be called upon to pay two rupees, where he paid only one so long as the enhanced rent does not exceed one-fourth the average value of the gross produce (which it will never exceed in Eastern Bengal), it behoves Government to settle the matter in such a manner as will leave very little room for future dispute. According to the scheme now proposed by me, there will hardly remain any such room. The procedure, proposed by Government in the letter to the Secretary to the British Indian Association, will, it is feared, produce an abundant crop of litigation for years to come

I have now come to the conclusion of what I had to say I have tried to shew in the above few pages, that the clamour raised by the zemindars and their advocates, to the effect that the proposed law would interfere with,

and was opposed to, the vested right of the zemindar, was without any foundation whatever I have also tried to explain the method which, in my opinion, would, more than any other, settle the enhancement question in a satisfactory manner But I have not yet said any thing which could be said on behalf of the ryots against the proposed law for enhancement of rents Under this law, which proposes to give to the zemindar one fourth of the value of the average gross produce provided it did not exceed double the rent now paid by the ryots, the most revolutionary changes will be introduced throughout Bengal and Behar. In Eastern Bengal the rents will be doubled and in Western Bengal and Behar they will be raised to the maximum limit of ¼th.

Are the circumstances of the ryot so good that he could afford to pay an annual rent of Rs 20, where he pays one of Rs 10 ? Is he not already, in nine cases out of ten, in the hands of the mahajan ? And will not this enormous increase whether sudden or gradual, cripple his means, and render him incapable of fighting the battle of life, which even people, much more favorably circumstanced than he, find a very hard battle indeed ? But it will be said, what matters it, whether the ryot lives or dies, the zemindar must have his due The law makes no distinction between the rich and the poor, and the law must have its course. Very good. But, are you not going to make a new law of enhancement in favor of the zemindar at the expense of the ryot ? Was the Reservation in the Permanent Settlement Law intended for the benefit of the ryot ? If it was meant for his benefit, is the proposed law regarding enhancement likely to answer that purpose ? Perhaps you will say ' Ah You don't look at the concessions to be made by the zemindar to the ryot in return, for the benefits to be derived by

him from the provisions regarding enhancement of rent You don't see that it proposes to extend occupancy rights, and to make these rights transferable' Nonsense! Reserve these arguments of yours for people having no experience of the mofussil Don't make a parade of them before one that has passed the greater part of his life among ryots. You speak of the extension of the occupancy rights to ryots holding for less than twelve years, but don t you know that excepting in newly thrown up *chars*, and in waste lands newly brought under cultivation in all old villages, there are few ryots who would be benefited by this extension? You must be very ignorant of the country, if you do not know, that the Bengal ryot seldom changes his paternal home but holds and cultivates the land held and cultivated by his father, grandfather and great grand father, that as more than 20 years have elapsed since the passing of Act X of 1859, he is seldom, if ever, in need of the protection you now offer him "But," you will say, "look at the advantages which the ryot will derive by his rights being made transferable" Will these your boasted advantages be of any use to him for the present? Will they enable him to meet the zemindars demand for enhancement in any way better than at present? Not at all Will they bring any addition to his income? Not a farthing They might be of use at some future time of distress or difficulty, but not before that In some districts custom has already given him the privilege of transferring his rights; in others he has got on tolerably well without this privilege Why then, for the sake of these questionable advantages, which he does not want, put on a new burden on his already over burdened shoulder? See how he "plods his weary way' through this vale of tears See how he works from dewy morn to dewy eve in summer's heat and winter's

cold—in the sun and in rains. See how he struggles hard with his lot, and still cannot make the two ends meet But he grumbles not Patient as his ox, he toils from day to day, and whether he fasts or lives on one meal or on two meals a day—whether he has or has not any clothes to cover his body or any hut to shelter his head, he pays you your rents, and he pays you your taxes Why then go to distress him with a law, which will greatly lessen his earnings, slender as they are at present? Why take away the last handful of rice from his mouth, or the last piece of rag from his back? He does not want your law It is not for his good Let him alone No Association, no Weeklies and no Dailies exist for him Dumb as the ox, his constant companion he does not know what it is to agitate He cannot hold monster-meetings, and cannot send up lengthy memorials to the Rulers of the land. But he has a firm faith in the good sense and justice of those Rulers—He looks upon them as his *ma bap* Let us in conclusion, bear in mind the words of Dr Goldsmith in *the Deserted Village*.

"Princes and lords may flourish, or may fade,
A breath can make them, as a breath has made:
But a bold peasantry, their country's pride,
When once destroyed, can never be supplied"

PARBATY CHURN ROY